National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

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Children's Hospital of San Francisco, California Pacific Medical Center, Case 20-CA-24067

177-1667, 530-4090-5000, 530-4825-7500, 530-6067-6067-3100, 530-6067-6067-5200, 530-8018-2520, 530-8018-2562, 530-8090-2500

The Region submitted this Section 8(a)(1) and (5) case for advice on whether, before an employer hospital merged with a second hospital, the employer unlawfully: 1) refused to provide to the Section 9(a) representative of its employees information relating to the effects on the unit of the employer's upcoming merger with the other hospital and 2) refused to bargain over the decision to merge or over the effects of the merger upon the unit; and whether the newly merged employer unlawfully: 1) withdrew recognition from the union and 2) unilaterally changed certain terms and conditions of employment of the unit employees; and whether Section 10(j) relief is warranted.

FACTS

Since about 1947, Children's Hospital of San Francisco (CHSF) and California Nurses Association (the Union) have had a collective-bargaining relationship covering a unit of all registered nurses (RNs) employed by CHSF. Their most recent collective-bargaining agreement extended from August 1, 1988 through May 31, 1991.[(1)]

In a letter dated May 23, 1990, the Union inquired with CHSF about rumors that it planned to merge with Pacific Presbyterian Medical Center (PPMC) and requested information as to the type of agreement reached, the implementation dates, and the effects of such a merger on the nursing department. In a return letter, CHSF responded that it and PPMC were to sign a memorandum agreeing to the merger toward the end of July 1990 and that it expected that federal and state regulatory agencies would grant the necessary approvals by December 1990. CHSF also stated that it had not set an implementation date and that no changes to the RN unit were currently being proposed. CHSF promised to keep the Union apprised of any developments.

By letter dated July 11, CHSF informed the Union that CHSF and PPMC had signed a document "consolidating our two hospitals." CHSF stated that they would submit the plan to state and federal authorities and reiterated that it expected their approvals by the end of the year. It also stated:

With the merger a reality in 1991, we will begin the gradual reorganization of our two separate hospital facilities into one organization, continuing to offer care at the two existing sites: Children's Hospital East and West Campuses, as well as Pacific Presbyterian Medical Center.

As the new organization evolves, we shall keep you apprised of changes in our structure which may have any impact on our labor contract with your organization.

By letters dated September 19, 1991 and again January 31, 1991 the Union asked CHSF to provide information regarding the effects of the planned merger upon the collective bargaining relationship between the Union and CHSF. On September 19, the Union specifically asked to review, inter alia, the merger agreement, but added, "We are not requesting the disclosure of information that you might regard as confidential. . ." After each letter, CHSF refused, calling the union's requests "premature" and "legally unfounded."

On March 1, CHSF informed the Union that it would terminate their collective-bargaining agreement as of June 1, 1991 and invited the Union to set a schedule for negotiations. By letter dated March 19, the Union requested certain financial information, including the 1990 and 1991 CHSF budgets, in preparation for contract renewal negotiations. In a March 25 letter, CHSF stated that it was prepared to give the Union some of the requested information, but not the budgets. CHSF did not explain its partial denial.[(2)]

On April 30, negotiations commenced between the Union and CHSF. During the first session, CHSF informed the union that the merger with PPMC was imminent, that it would happen within 45 days. CHSF, through its chief negotiator, Attorney Laurence Arnold, said that the hospitals had chosen neither a name, nor a chief executive officer, for the new entity. In all, the parties met at six bargaining sessions, the last occurring on June 11. Throughout the negotiations Arnold refused to bargain over any matters concerning the terms and conditions of employment of the nurses after the merger date. Arnold also stated that he was not authorized to speak for the "new entity." Responding to a request by the Union to bargain over the effects of the merger, Arnold refused to discuss the effects, saying that the merger had not yet occurred. The parties reached no agreement on a renewed contract, although they agreed to a day-by-day extension of their existing contract until the merger was effected.

On June 16, 1991, CHSF and PPMC merger was finalized. The hospitals organized the operation within the corporate structure of CHSF, which was renamed California Pacific Medical Center (CPMC). The parties used the CHSF corporation to save time and expense in creating a new nonprofit hospital corporation. The parties allowed the PPMC corporation to lapse. The merger agreement referred to CHSF both by its old name and by the name California Pacific Medical Center (CPMC) and stated: "PPMC shall be merged into CHSF, and CHSF shall be the surviving corporation." The membership of the CPMC board of directors now consists of 23 voting members total: 11 former members from each of the boards of CHSF and PPMC as well as the former president of PPMC, Aubrey Serfling, who also serves as the president and chief executive officer of CPMC. CPMC also had an entirely new set of corporate bylaws. CPMC renamed the CHSF facility the "California Campus" and the former PPMC facility is the "Pacific Campus."

RNs employed by CHSF continued in their jobs without interruption after the June 16 merger. On June 16, the CPMC implemented new wage scales, a new computation method for paid-time-off, and a new pension plan for the RNs. In some cases, these changes meant increases for the now-California campus nurses. CPMC did not bargain with the Union over any of these changes because, on the same day, CPMC notified the Union and the RNs that it was withdrawing recognition from the union. In its withdrawal letter, CPMC informed the Union that "the professional nursing staff as [sic] CHSF and PPMC are a single, integrated work force with common leadership, policies, procedures, pay, employee relations, etc." CPMC stated in the letter that there were 838 unrepresented "professional nurses" employed at the Pacific Campus as compared to 589 Union-represented RNs employed at the California Campus. It stated, "[T]he clear majority of the professional nurses have not selected union representation." CPMC asked the Union to join in its request to the Labor Board to hold an election to determine if the nurses desire union representation. On the next day, the Union filed the instant charge, while CPMC filed an RM petition seeking an election.[(3)]

On September 4, 1991, CPMC announced new directors for its divisions and the departments within those divisions. The administration for the two campuses is now unified, and labor relations policy for both campuses is conducted by one director. Further, former CHSF Director of Nursing Penny Holland became the Vice President of Nursing Services for CPMC. Holland consolidated the management of nursing departments on both campuses under nine new directors. The current arrangement maintains nursing managers from the CHSF operations, who supervise individual medical units. These units remain intact as before the merger.

Since the merger, in addition to the pay raises and the paid-time-off and the pension plan changes, CPMC has also unilaterally changed a number of other terms and conditions of employment of the RNs. CPMC states that it has merged the units' seniority lists, established uniform educational requirements, adjusted shift differentials, in addition to other changes. CPMC also established a joint "float pool" of nurses to fill in for absences and serve other fluctuating needs on the campuses. CPMC estimates that about 14 nurses now work at varying times at both campuses. CPMC states that new nurses hired will be required to work at both campuses. In addition, CPMC has centralized other operations, such as recruiting and hiring and educational services. In all of these areas, CPMC followed a policy of making interaction between nurses already employed on each campus voluntary on the part of the individuals involved.

ACTION

We concluded that the Region should issue a Section 8(a)(1) and (5) complaint, absent settlement, alleging that CHSF unlawfully refused to provide the Union with the requested information regarding the merger and that CPMC unlawfully withdrew recognition from the Union and changed terms and conditions of employment of unit RNs at the California Campus without first bargaining with the Union to impasse.[(4)]

Initially, we noted that the Union takes the position that its California Campus RN unit remains appropriate and viable, notwithstanding the merger of PPMC and CHSF. At no time did the Union request bargaining over the May 1990 decision of CHSF to merge its corporation with PPMC, even though it was fully aware of the decision during all relevant times. Instead, it made a request to bargain with CHSF over the effects of the merger decision on the unit. Moreover, as discussed below, the RN unit at the California Campus in fact has not been integrated with the unit at the other CPMC hospital. Thus, it is unnecessary to decide the issue of whether that merger decision constitutes a mandatory subject of bargaining.

I. Requests for Information

On at least three occasions the Union requested information regarding the merger arrangements so that it could assess the impact of the employer's action upon the RN unit. On a fourth occasion, it requested the 1990 and 1991 budgets for negotiating purposes. It is well settled that an employer must provide the bargaining representative of its employees with requested information:

if there is a possibility that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' collective-bargaining representative. [(5)]

The Board applies a liberal "discovery-type" standard in determining whether Section 8(a)(5) requires the production of requested information, i.e., whether the information is "probably or potentially relevant" to the execution of the union's statutory duties.[(6)]

CHSF asserted in denying the Union's request for information regarding the merger and the 1990 and 1991 budgets that the requested information was confidential. In this regard it is well established that an employer's legitimate and substantial interest in keeping relevant information confidential may privilege its refusal to comply with a union's request for information. [(7)] Whether the Employer is so privileged turns on whether it has made a reasonable and good-faith offer to accommodate its need for secrecy with the Union's need for the relevant information.[(8)] In a case very similar to the instant case, the Board, with court approval, held that an employer unlawfully withheld a merger agreement where it had failed to meet its burden of demonstrating a legitimate and substantial confidentiality interest outweighing the union's need for the information requested. [(9)]

We conclude that there is no merit to CHSF's confidentiality argument. CHSF has failed to present evidence to establish that the merger information requested by the Union or the 1991 and 1990 budgets is confidential. Moreover, CHSF implicitly rejected the Union's September 19, 1991 offer to consider confidentiality issues in limiting the information divulged by CHSF. CHSF therefore unlawfully denied the requested information under Section 8(a)(5) and (1) of the Act.

II. Bargaining Over the Effects of the Merger

It is well settled that an employer must bargain "in a meaningful manner and at a meaningful time" with the representative of its employees over the effects of a decision that has and impact on the employees.[(10)] CHSF failed and refused the Union's request to bargain over the effects of the merger of the two hospital corporations upon the RNs in the unit. The Region therefore should allege in its complaint that this refusal to bargain with the Union violates Section 8(a)(5) and (1).[(11)]

III. The Withdrawal of Recognition and Unilateral Changes

We concluded that CPMC has an obligation to continue to recognize and bargain with the Union and that it unlawfully changed the wages and benefits of the unit RNs on the view that the RN unit at the California Campus remains appropriate[(12)] and that the corporation is simply the "continuing existence" of CHSF or, in the alternative, is a legal successor to CHSF which made it clear at the outset that it would retain all of the predecessor corporation's employees.

A. The RN Unit at the California Campus Remains Viable

The continuing obligation to bargain of a successor or a continuing corporate entity, of course, depends upon the continued appropriateness and viability of the unit.[(13)] We concluded that the RN unit at the California Campus remains appropriate in this case.

In Mercywood Health Building,[(14)] an employer relocated an operation, ("Mercywood") along with all its employees "en masse" from a small facility located about 18 miles from its headquarters campus ("St. Joseph's") to a separate building on the St. Joseph's campus. The employer had a collective-bargaining relationship with a union for the Mercywood service and maintenance unit, numbering 48 to 98 employees, from which it withdrew recognition after the move to the campus. The 400 St. Joseph's service and maintenance employees, as well as about 2200 other employees, were unrepresented. The employer refused to provide the union with requested information about the move, refused to bargain about the effects of the move, withdrew recognition from the union, and made unilateral changes in employee benefits. In defense of its actions, the employer argued that it had consolidated the unit with the larger employee group, relying on its integrated management structure, centralized hiring procedures, and centralized labor policies and its new "holistic" philosophy of patient care. Therefore, the employer argued, it ceased to have any obligation to bargain with the union representing the service and maintenance unit.[(15)] The Board rejected the employer's defense, stating:

[T]he evidence fails to establish how [the employer's new] holistic approach has in any way affected the working conditions of the unit employees. . . . Finally, although we recognize that the St. Joseph's and the Mercywood facilities are now located on the same campus, the evidence fails to establish that any of the unit employees (excepting the cooks, groundskeeper, and maintenance employees discussed at fn. 5 below) ever assist at the other facilities. Nor is there evidence that employees from other facilities help out at Mercywood. Thus, here is no interchange between the Mercywood employees and the employees at other facilities. Therefore, we find that the Respondent does not operate one, integrated facility, but rather continues to operate multiple facilities as it did prior to the 25 October move.[(16)]

The Board adopted the ALJ's conclusion that the employer violated Section 8(a)(5) and (1) by unilaterally changing the Mercywood employees' benefits and health insurance coverage in derogation of the employer's continuing obligation to bargain. The ALJ observed that it was "unconscionable" that the employer, in justifying its withdrawal of recognition from the union, should be able to rely on changes in unit employees' working conditions, which came about as a result of the employer's misconduct.[(17)]

The Board holding in Mercywood Hospital is controlling in the instant case. Indeed, given that there was no relocation in the instant case and the two units are at different hospitals almost two miles apart, it presents a more compelling argument than Mercywood for the Union's continuing to represent the California Campus RN unit. Thus, the CHSF registered nurses continued in their jobs after the CHSF-PPMC merger as before the merger. They work under the same immediate supervisors, so that the day to day labor relations is separate. They perform the same jobs, and provide medical care to patients from the same community. As in Mercywood, there is little evidence of any interchange with personnel from the other hospital. There is a float pool of approximately 14 RNs that work at either of the two locations, but that number is insignificant in a unit of 589 RNs.[(18)] It is doubtful as to what level of "integration" will ever exist; CPMC seems to be following a policy of giving the RNs the option of volunteering to work at the other hospital. Further, while there were changes in the management of CPMC, "[t]hey were made at managerial levels far removed from the concerns of the employees involved."[(19)] Nor do the other changes in the administration at CPMC, such as the centralization of labor relations authority at the top level and recruiting and hiring operations, support a finding of merger in this case.[(20)] The most significant charges for the California Campus nurses are the new terms and conditions of employment. But it would be incongruous to allow an Employer to destroy the identity of a bargaining unit by unilaterally making changes in employment conditions over which it was otherwise refusing to bargain.

(21)

Accordingly, the RN unit at the California Campus remained appropriate at the time of the merger and remains appropriate today. The issue remaining is whether the entity that exists after the merger (CPMC) must recognize the Union.

B. The Corporate Merger

Under a successorship analysis, the Board determines whether there is "substantial continuity in the employing enterprise," as demonstrated by continuity in the following: (1) business operations; (2) plant; (3) workforce; (4) jobs and working conditions; (5) supervisors; (6) machinery, equipment and methods of production; and (7) product or service.(22) A successor may set initial terms and conditions of employment without bargaining unless "it is perfectly clear that the new employer plans to retain all of the employees in the unit. . ." (23) In the latter circumstance the successor employer forfeits the right to set the initial terms of employment.(24)

Stock transfers have been distinguished from successorship situations in that a stock transfer "involves no break or hiatus between two legal entities, but is, rather, the continuing existence of a legal entity."(25) Thus, the Board, with court approval, has found that a change in stock ownership "does not absolve a continuing corporation of responsibility under the Act."(26)

The underpinnings of the distinction between successorship and stock transfer are basic principles of corporate law. A corporation is "an entity distinct from its individual members or stockholders, who, as natural persons, are merged in the corporate identity," and it remains "unchanged and unaffected in its identity by changes in its individual membership."(27) The "corporate veil" is rarely pierced, never at the behest of the shareholders or corporate officers, but only for the benefit of an aggrieved third party.(28) Whatever the reasons for structuring a transaction as a stock purchase, the corporation cannot deny its ongoing existence. Thus, a party that has structured a transaction so as to retain and continue the preexisting corporate identity, and thereby enjoy tax, leasing, or other business benefits, must also accept the obligations arising out of such an arrangement.(29) Further, it is irrelevant that a collective-bargaining agreement is not in effect at the time of the stock transfer. In Rockwood Energy, the existence of the unexpired collective-bargaining agreement was only significant insofar as the employer was obligated to apply it for the remainder of its term; the employer was still obligated after its expiration to continue to bargain with the union.(30)

Some courts have held that the successorship doctrine is inapplicable where there has been a transfer of stock of a corporation. (31) In addition, the Board, acknowledging that it had reviewed factors also relevant under the successorship doctrine, refused to apply a successorship analysis where an employer resumed production after a 20-month hiatus "under the same ownership, corporate form, and management and was engaged in the same business with basically the same production process as prior to the shutdown." The Board observed, "[N]o logical or legal basis exists for treating the Respondent as a new employer when it reopened."(32) Whether a stock transfer or a successorship analysis is applied, the ultimate issue is whether the business change "affected employee attitudes towards representation."(33)

Applying these principles to the instant case, the Region should argue that, because the nature of the transaction is closer to a stock transfer than a successorship, CPMC continues to be legally obligated to bargain with the Union as the representative of the RN unit. Thus, the original employer of the Union-represented RNs in this case continues in existence. If a purchaser of corporate stock is obligated to recognize, and bargain with, the union representing the corporation's employees, then a fortiori a corporation, whose name is changed, but whose stock does not change hands, as here, continues to have the same obligation to recognize and bargain with the union representing its employees. CPMC occupies the same corporate structure as CHSF. The parties to the merger changed the corporation's name, gave CPMC control of the PPMC operation, and reconstituted its board of directors. The name change, the change in directors on its board and the unification of its management structure do not affect its continuing identity or its legal obligations.(34) Further, the motivation of the individuals who have elected to preserve CHSF's status as a corporation for the purposes of engaging in the healthcare business is irrelevant to the fact of its continuing legal status. In addition, it is no defense that the contract covering the RNs had expired at the time of the merger.(35) In addition, what is most important, none of these changes, excepting the unilateral changes in terms and conditions of

employment, had an effect on the RNs' attitude toward Union representation. Again citing to Mercywood Hospital, it would be "unconscionable" to allow CPMC to rely upon its misconduct in implementing those new conditions in support of its position that it has been relieved of its labor obligations.(36) CPMC, therefore, continues to have the same obligation that it had under the CHSF name to bargain with the Union as the exclusive representative of the RNs employed at what is now known as the California Campus.

In the alternative, the Region should argue that CPMC is a legal successor to CHSF in that, without any hiatus in operations, it is in the same business as CHSF at the same facility, with the same workforce occupying the same jobs under the direction of the same supervisors. CPMC is using the same equipment, machinery and methods of providing health care for generally the same population. Concededly, changes have occurred in the high-level management of the hospital, but that would not affect the unit RNs' attitudes regarding representation by the Union.(37) Moreover, the Region should argue that CPMC made it "perfectly clear" that it planned to, and did, retain all of the employees from the predecessor's operation. Thus, under Fremont Ford(38) and East Belden Corp.(39) CPMC forfeited the right to set the initial terms and conditions of employment of the RNs because there was never any question that the Union was, and is, the presumed choice of the bargaining unit.

In sum, the Region should argue that, whichever theory applies in the circumstances of this case, the changes that occurred in the CHSF-CPMC operation were insufficient to affect employee attitudes toward Union representation at any time. CPMC, therefore, had a continuing obligation to recognize and bargain with the Union in the California Campus unit, which continues to be appropriate. Further, CPMC's failure to fulfill that obligation by making unilateral changes in the terms and conditions of employment of the RNs violated Section 8(a)(5) and (1) of the Act.

R.E.A

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[1] That agreement was between the Union and the Affiliated Hospitals of San Francisco (AHSF) of which CHSF was a member. Each AHSF member signed the agreement. The member hospitals maintained separate bargaining units of RNs. During the term of the 1988-1991 agreement, AHSF disbanded, and CHSF conducted its own negotiations with the Union for a successor agreement.

[2] It appears that CHSF failed to provide any of the information requested on March 19.

[3] The RM case is blocked by the instant case.

**[4] [*FOIA Exemption 5*

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[5] Associated General Contractors of California, 242 NLRB 891, 893 (1979), enf'd 633 F.2d. 766 (9th Cir. 1980); Mary Thompson Hospital, 296 NLRB No. 164, JD slip op. at 10-11 (October 6, 1989), enf'd F.2d , 138 LRRM 2500 (7th Cir. 1991). See generally NLRB v. Acme Industrial Co., 385 U.S. 432 (1967).

[6] Washington Gas Light Co., 273 NLRB 116, 117 (1984).

[7] See Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979).

[8] See Washington Gas Light Co., above.

[9] See Mary Thompson Hospital, above, 296 NLRB No. 164, slip op. at n. 1.

[10] First National Maintenance Corp. v. NLRB, 452 U.S. 666, 681-682 (1981).

[11] Given that none of the RNs were terminated, nor did any lose wages or hours due to the changes arising from the CHSF-PPMC merger, a Transmarine Navigation Corp. (170 NLRB 389 (1968)) remedy is unwarranted in this case.

[12] A unit of all registered nurses in an acute care hospital is appropriate, pursuant to the Board's rules. 29 CFR 103.30.

[13] See, e.g., Stroehman Bros. Co., 252 NLRB 988 (1980), enf'd in unpublished opinion 108 LRRM 2280 (3d Cir. 1981); Helnick Corp., 301 NLRB No. 18, slip op. at 16 (January 15, 1991).

[14] 287 NLRB 1114 (1988), enf. denied sub nom NLRB v. Catherine McAuley Health Center, 885 F.2d 341 (6th Cir. 1989); see also Armco, Inc. 279 NLRB 1184 (1986), enf'd in relevant part 832 F.2d 357 (6th Cir. 1987), cert. denied 486 U.S. 1042.

[15] In fact, certain unit employees had been integrated into the overall operation of main facility. 287 NLRB at 1116 n. 5.

[16] 287 NLRB at 1115 (emphasis added). See discussion at n. 33 and text, below. Cf. Abbott-Northwestern Hospital, 274 NLRB 1063 (1985) (relocation of 63 unrepresented psychiatric assistants to hospital facility where 9 represented psychiatric assistants are employed "obliterated" the split between the two units and privileged the employer's withdrawal of recognition).

[17] Mercywood Hospital, 287 NLRB at 1122.

[18] 287 NLRB at 1115 and 1116 n. 5 (no merger even though more than five, out of no more than 98 positions, integrated with larger unit).

[19] 287 NLRB at 1122.

[20] 287 NLRB at 1115.

[21] Mercywood Hospital, 287 NLRB at 1122.

[22] See, e.g., Aircraft Magnesium, 265 NLRB 1344 (1982), enfd. 115 LRRM 3712 (9th Cir. 1984); Canterbury Villa, Inc., 271 NLRB 144 (1984). See generally NLRB v. Burns International Security Services, Inc., 406 U.S. 272 (1972).

[23] Burns, 406 U.S. at 294-95.

[24] See, e.g., Fremont Ford, 289 NLRB 1290, 1296-1297 (1988); East Belden Corp., 239 NLRB 776, 793 (1978), enf'd in an unpublished opinion 108 LRRM 2104 (9th Cir. 1980).

[25] Esmark, Inc. v. NLRB, 887 F.2d 739, 751 (7th Cir. 1989)(quoting TKB International Corp. t/a Hendricks-Miller Typographic Co., 240 NLRB 1082, 1083, n. 4 (1979)); Morco, Inc. d/b/a Towne Plaza Hotel, 258 NLRB 69, 71 (1981); Phil Wall & Sons Distributing, 287 NLRB 1161, 1165 (1988).

[26] Rockwood Energy and Mineral Corp., 299 NLRB No. 162, slip op. at 10 (September 27, 1990), enf'd F.2d , 137 NLRB 3008 (3d Cir. 1991); Esmark, Inc. v. NLRB, 887 F.2d at 751, aff'g in relevant part Swift Independent Corp., 289 NLRB 423, 428 (1988); Miller Trucking Service, Inc., 176 NLRB 556 (1969), aff'd in relevant part, 445 F.2d 927 (10th Cir. 1971). See also John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 549 (1964) (corporate employer's "disappearance by merger" did not automatically terminate arbitration rights of employees covered by an agreement with that employer).

[27] Topinka's Country House, Inc., 235 NLRB 72, 74 (1978) (citing 18 Am. Jur. 2d Corporations, sec. 13).

[28] See EPE, Inc., 284 NLRB 191, 198 (1987), enf'd 845 F.2d 483, 487-90 (4th Cir. 1988).

[29] See United Food & Commercial Workers Local 152 v. NLRB, 768 F.2d 1462, 1471 (D.C. Cir. 1985); Miami Foundry Corp., 252 NLRB 2, 6 (1980), enfd. 682 F.2d 587 (6th Cir. 1982).

[30] 299 NLRB No. 162, slip op. at 10; Sterling Processing Corp., 291 NLRB 208, 210 (1988).

[31] See discussion in NLRB v. Rockwood Energy and Mineral Corp., 137 NLRB at 3011; Esmark, Inc. v. NLRB, 887 F.2d at 751; EPE, Inc. v. NLRB, 845 F.2d at 489.

[32] Sterling Processing Corp., 291 NLRB at 210 n. 10. But see Rockwood Energy and Mineral Corp., 299 NLRB No. 162, slip op. at 12-13 (after Board concludes change was a stock transfer, it also considers alternative successorship theory).

[33] NLRB v. Rockwood Energy and Mineral Corp., 137 NLRB at 3011 (quoting Hospital Employees District 1199P v. NLRB, 864 F.2d 1096, 1104 (3d Cir. 1989) (quoting Premium Foods, Inc. v. NLRB, 709 F.2d 623, 627 (9th Cir. 1983)); Nephi Rubber Products Corp., 303 NLRB No. 19, slip op. at 4-5 (May 29, 1991).

[34] Rockwood Energy and Mineral Corp., 299 NLRB No. 162, slip op. at 3-4; Topinka's Country House, Inc., 235 NLRB at 74.

[35] Sterling Processing Corp., 291 NLRB at 210.

[36] **Mercywood Hospital, 287 NLRB at 1122.**

[37] **Id.**

[38] **289 NLRB at 793.**

[39] **239 NLRB at 793.**